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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,409	01/04/2002	Michio Takahashi	800_024 DIV	7728
25191	7590	11/07/2003	EXAMINER	
BURR & BROWN			BOS, STEVEN J	
PO BOX 7068				
SYRACUSE, NY 13261-7068			ART UNIT	PAPER NUMBER
			1754	

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicant No.	Applicant(s)
	10/037,409	TAKAHASHI, MICHIO
	Examiner	Art Unit
	Steven Bos	1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 September 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 16-24 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 16-20 is/are rejected.
- 7) Claim(s) 21-24 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thackeray et al.

Thackeray et al., suggests the instantly claimed process on pg. 463, third full paragraph, which would appear to form the instantly claimed crystallite size and lattice distortion because the taught process is the same as that instantly claimed. The instantly claimed "exceeds 0.5" is not patentably distinct from that taught by Thackeray et al. See In re O'Farrell 7 USPQ2d 1673.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manev '089.

Manev suggests the instantly claimed process in col. 8, comparative example 3, which would appear to form the instantly claimed crystallite size and lattice distortion because the taught process is the same as that instantly claimed.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 279235.

EP '235 suggests the instantly claimed process in col. 4, lines 32-36, which would appear to form the instantly claimed crystallite size and lattice distortion because

the taught process is the same as that instantly claimed. The instantly claimed "exceeds 0.5" is not patentably distinct from that taught by Thackeray et al. See In re O'Farrell 7 USPQ2d 1673.

Claims 16-18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogihara '410.

Ogihara suggests the instantly claimed process in the paragraph bridging cols. 5-6, which would appear to form the instantly claimed crystallite size and lattice distortion because the taught process is the same as that instantly claimed. The instantly claimed "exceeds 0.5" is not patentably distinct from that taught by Thackeray et al. See In re O'Farrell 7 USPQ2d 1673. The instant claims do not require forming a cubic spinel lithium manganese oxide; however they do require forming a lithium manganese oxide material which is what Ogihara forms.

Claims 21-24 are objected to as dependent on a rejected base claim.

Applicant's arguments filed September 15, 2003 have been fully considered but they are not persuasive.

Applicant states that Ogihara forms a rock salt LiMnO₂, not a spinel LiMn₂O₄ as recited in claim 16.

However claim 16 does not require forming a spinel LiMn₂O₄ as explained in the body of the rejection above. Moreover Ogihara suggests the same process that is

instantly claimed. It is unclear how applicant can obtain a different product than that taught. Recitation of a different product from the same process does not make that process new, see *In re Sussman* 60 USPQ 538, *In re Best* 195 USPQ 430, *In re Grose* 201 USPQ 57.

Applicant's arguments and amendments overcome Mayer '947 and Manev '943.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Bos whose telephone number is 703-308-2537.

The examiner can normally be reached on M-F, 8AM-6PM but is on increased flexitime sch.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 703-308-3837. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Steven Bos
Primary Examiner
Art Unit 1754

sjb